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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**
15 **AT SAN JOSÉ**

16 **SAN JOSE POLICE OFFICERS'**
17 **ASSOCIATION,**

18 Plaintiff,

19 v.

20 **CITY OF SAN JOSÉ, BOARD OF**
21 **ADMINISTRATION FOR POLICE AND FIRE**
22 **DEPARTMENT RETIREMENT PLAN OF**
23 **CITY OF SAN JOSE, and DOES 1-10,**
24 inclusive,

25 Defendants.

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]

ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2

**PLAINTIFF AND PETITIONER AFSCME
LOCAL 101'S OBJECTIONS TO
EVIDENCE FILED IN SUPPORT OF
OPPOSITION TO DEFENDANTS' CITY OF
SAN JOSE'S AND DEBRA FIGONE, IN
HER OFFICIAL CAPACITY, MOTION
FOR SUMMARY ADJUDICATION**

Hearing Date: June 7, 2013
Hearing Time: 9:00 a.m.
Courtroom: 2
Judge: Hon. Patricia Lucas
Complaint Filed: July 5, 2012
Trial Date: June 17, 2013

26 **AND RELATED CROSS-COMPLAINT AND**
27 **CONSOLIDATED ACTIONS**

Objections to Declaration of Alex Gurza

Objection No. 1: "Prior to the enactment of Measure B, City employees made 'additional' pension contributions under agreements between the City and its labor unions for the purpose of paying towards the City's unfunded pension liabilities. City employees also made, or were required by the City to make, wage concessions as an alternative to making additional pension contributions." (Gurza declaration, page 5, ¶ 15, lines 11-14)

Grounds for Objection No. 1: *Lack of Foundation*, Cal. Evid. Code §§ 702, 170, 402-403; *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352.

A declarant must demonstrate that matters stated in the declaration are within the declarant's personal knowledge. Merely asserting that the facts set forth in a declaration are within the declarant's personal knowledge, and that the declarant is competent to testify to those facts as a witness is insufficient. Rather, the text of the declaration itself must affirmatively demonstrate that a declarant possesses the required personal knowledge and competency. Cal. Code Civ. Proc., § 437(c); *Snider v. Snider*, 200 Cal.App.2d 741, 19 (1st Dist. 1962).

There is no evidence that Mr. Gurza has personal knowledge to support the statements contained in ¶ 5 of his declaration. There is no evidence that he has personal knowledge of pension payments prior to the enactment of measure B or the purpose for which the payments were made. There is no evidence that he has personal knowledge of any "wage concessions" that may have been made prior to the enactment of Measure B or the reasons they were made.

Furthermore, evidence is inadmissible if it has no tendency to prove or disprove a disputed fact of consequence to determination of this action, and it may be excluded if its probative value is outweighed by the likelihood of undue prejudice. This paragraph implies that AFSCME made such additional pension contributions prior to the enactment of Measure B. However, there is evidence that AFSCME never had such an agreement with the City (Allen Decl. ¶ 15), and Defendants offer no evidence to the contrary. Therefore, it would be unduly prejudicial to consider such evidence as it applies to AFSCME.

Court's Ruling on Objection No. 1: ☐ Sustained ☐ Overruled

Objection No. 2: "In 2010, a coalition of City union proposed that the City achieve this compensation reduction by employees making an 'additional' pension contribution to defray the City's required pension contributions. This coalition consisted of AEA, ABMEI, AMSP, CAMP, IBEW and OE#3 ("Coalition") (Plaintiffs in the *Mukhar* case are members and/or former members of AEA and AMSP [Plaintiff Mukhar is president of AEA, plaintiff Dapp is president of AMSP], and plaintiffs in the *Harris* case are members and/or former members of OE#3.)" (Gurza declaration, pages 6-7, ¶ 17, lines 6:24-28, 7:1)

Grounds for Objection No. 2: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352

AFSCME was not one of the aforementioned "Coalition" unions; in fact, the statement fails to explicitly name either MEF, CEO, and/or AFSCME as a member of that coalition. Because

1 AFSCME was not part of this group, this evidence is irrelevant and would cause AFSCME
2 undue prejudice if other unions' alleged positions or actions are imputed against it.

3 **Court's Ruling on Objection No. 2:** _____ Sustained _____ Overruled

4 **Objection No. 3:** "The SJPOA and IAFF also offered proposals to achieve compensation reduction
5 via employees making an "additional" pension contribution to defray the City's required pension
6 contributions. (The SJPOA is a plaintiff in the *SJPOA* case; plaintiffs in the *Sapien* case are members
and/or former members of IAFF.)" (Gurza Decl., p. 6, ¶ 18, lines 2-5.)

7 **Grounds for Objection No. 3:** *Lack of Relevance and Undue Prejudice, Cal. Evid.*
8 *Code §§ 210, 350, 352*

9 The City does not implicate AFSCME in ¶18, and, in fact, AFSCME never made such a
10 proposal. Because AFSCME was not part of this group, this evidence is irrelevant and would
11 cause AFSCME undue prejudice if other unions' alleged positions or actions are imputed
against it.

12 **Court's Ruling on Objection No. 3:** _____ Sustained _____ Overruled

13 **Objection No. 4:** "The Coalition unions took the position that the additional employee retirement
14 contribution of 10% could be authorized by an amendment to the Municipal Code and did not violate
15 the City Charter. An initial proposal received from the Coalition stated:

16 5.1.2. Additional Retirement Contribution.

17 Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement
18 contributions in an amount equivalent to 10% of total compensation effective June 27, 2010.
19 The amounts so contributed will be applied to subsidize and thus reduce the prior service
20 contributions that the City would otherwise be required to make. The parties specifically
21 understand that this agreement neither alters nor conflicts with the City Charter Section 105(c)
22 because under this agreement, employees will be subsidizing the City's Section 1505(c)
23 required contribution. This employee retirement contribution is in addition to and apart from
the employee retirement contribution rates established and approved by the Federated City
24 Employees' Retirement System Board. This additional employee contribution shall be
25 reduced by half (50%) effective the first payroll period for Fiscal Year 2012.

26 * * * *

27 In order to implement this provision, the City may be required to amend the Federated City
28 Employees' Retirement System by adopting an ordinance amending the San Jose Municipal
Code. These contributions shall be treated in the same manner as any other contributions.
Accordingly, these additional employee contributions will be made on a pre-tax basis through
payroll deductions pursuant to IRS Code Section 414(h)(2) and will be subject to withdrawal,

1 return and redeposit in the same manner as any other employee contributions.

2 A true and correct copy of the Coalition proposal provided to the City, dated 6/18/10, 4:25
3 p.m., is attached as Exhibit 2. True and correct copies of additional union proposals by Coalition
4 members and by the SJPOA and IAFF to pay an increased employee contribution rate are attached as
5 Exhibits 3 thru 6." (Gurza Decl., p. 6, ¶ 19, lines 6-27.)

6
7 **Grounds for Objection No. 4:** *Lack of Relevance and Undue Prejudice*, Cal. Evid.
8 Code §§ 210, 350, 352

9 AFSCME was not one of the aforementioned "Coalition" unions (*see* Gurza Decl., ¶ 17); in
10 fact, Gurza's declaration fails to explicitly name either MEF, CEO, and/or AFSCME as a
11 member of that coalition. Because AFSCME was not part of this group, this evidence is
12 irrelevant and would cause AFSCME undue prejudice if other unions' alleged positions or
13 actions are imputed against it.

14 **Court's Ruling on Objection No. 4:** _____ Sustained _____ Overruled

15 **Objection No. 5:** Gurza Decl., p. 6, ¶ 19, Exhibits 2-6 (Proposals to pay increased employee
16 contribution rate by unions other than AFSCME)

17 **Grounds for Objection No. 5:** *Lack of Relevance and Undue Prejudice*, Cal. Evid.
18 Code §§ 210, 350, 352

19 AFSCME was not one of the aforementioned unions; in fact, Gurza's declaration fails to
20 explicitly allege that either MEF, CEO, and/or AFSCME made such a proposal. Because
21 AFSCME was not part of this group, this evidence is irrelevant and would cause AFSCME
22 undue prejudice if other unions' alleged positions or actions are imputed against it.

23 **Court's Ruling on Objection No. 5:** _____ Sustained _____ Overruled

24 **Objection No. 6:** "During the negotiations over the payment of the additional pension contributions,
25 representatives of the Coalition unions and the city, including myself, discussed the legality of the
26 additional contributions under the City Charter. Under the City Charter, the contribution rate to pay
27 for "current service or current service benefits" may not exceed the ratio of 3 for employees to 8 for
28 the City, but the contribution rate to pay for "prior service or prior service benefits" is not subject to
any ratio. The Coalition unions took the position that the additional retirement contributions for
unfunded liabilities were to pay for "prior service" which is not subject to the 3 to 8 ratio under the
Charter. Thus, the unions took the position that the employees could pay the entire pension
contribution required for the unfunded liabilities." (Gurza declaration, page 7, ¶ 20, lines 1-9)

Grounds for Objection No. 6: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§
210, 350, 352; *Opinion Evidence*, Cal. Evid. Code § 800, 801; *Hearsay*, Cal. Evid. Code §§
1200.

1 The information included in ¶ 20 of Mr. Gurza's declaration relates to positions taken by the
2 "Coalition" unions. However, there is no evidence that AFSCME Local 101 ("AFSCME")
3 was a part of that group that took the positions alleged within that paragraph. (See Gurza
4 Decl. ¶ 17 (defining "Coalition" without mention of MEF, CEO, or AFSCME Local 101).)
5 For this reason, any probative value of this evidence is outweighed by the prejudicial effect of
6 its introduction, *i.e.* that the alleged actions or words of other parties will be imputed on
7 AFSCME. Thus, the evidence is irrelevant and inadmissible.

8 Furthermore, there is no evidence showing that the opinions expressed in ¶ 20 of the Gurza
9 declaration were proffered by individuals qualified to express such opinions. There is no
10 evidence that the "Coalition unions" have personal knowledge of, or are qualified to assess
11 whether "employees could pay the entire pension contribution required for the unfunded
12 liabilities." Cal. Evid. Code §§ 800 (lay witness opinions); 801 (expert opinion testimony).
13 Similarly, there is no evidence to demonstrate that Mr. Gurza or the "representatives of the
14 Coalition unions and the city" are qualified to assess "legality of the additional contributions
15 under the City Charter." Thus, the statements in ¶ 20 of Mr. Gurza's declaration are
16 inadmissible as improper opinion testimony.

17 Finally, the statements are hearsay without an exception. Out of court statements offered for
18 the truth of the matters they assert are inadmissible hearsay. Again, AFSCME was not a part
19 of the "Coalition" and such unions were not necessarily representing its interests. Because
20 those unions neither represent AFSCME during this litigation nor are opposed to it, any
21 alleged statements they made do not constitute party admissions as far as AFSCME is
22 concerned. Therefore, such statements are hearsay without an exception.

23 **Court's Ruling on Objection No. 6:** _____ Sustained _____ Overruled

24 **Objection No. 7:** "In a letter dated June 17, 2010, the Coalition unions transmitted copies of their
25 proposal to make additional pension contributions to the Mayor and City Council. A true and correct
26 copy of the letter and attached agreements that we received is attached as Exhibit 7." (Gurza Decl., p.
27 7, ¶ 21, lines 10-12.)

28 **Grounds for Objection No. 7:** *Lack of Relevance and Undue Prejudice*, Cal. Evid.
Code §§ 210, 350, 352

AFSCME was not one of the aforementioned "Coalition" unions (*see* Gurza Decl., ¶ 17); in
fact, the statement fails to explicitly name either MEF, CEO, and/or AFSCME as a member of
that coalition. Because AFSCME was not part of this group, this evidence is irrelevant and
would cause AFSCME undue prejudice if other unions' alleged positions or actions are
imputed against it.

Court's Ruling on Objection No. 7: _____ Sustained _____ Overruled

Objection No. 8: Gurza Decl., p. 7, ¶ 21, Exhibit 7 (letter from Coalition unions to Mayor and
City Council)

1 **Grounds for Objection No. 8:** *Lack of Relevance and Undue Prejudice*, Cal. Evid.
2 Code §§ 210, 350, 352

3 AFSCME was not one of the aforementioned "Coalition" unions (*see* Gurza Decl., ¶ 17); in
4 fact, the statement fails to explicitly name either MEF, CEO, and/or AFSCME as a member of
5 that coalition. Because AFSCME was not part of this group, this evidence is irrelevant and
6 would cause AFSCME undue prejudice if other unions' alleged positions or actions are
7 imputed against it.

8 **Court's Ruling on Objection No. 8:** _____ Sustained _____ Overruled

9 **Objection No. 9:** "During the City Council hearing on the proposal for employees to make
10 additional pension contributions, Christopher Platten, an attorney representing members of the
11 Coalition, stated the position of his clients that the City Charter was not a barrier to employees
12 paying the increased contribution rates." (Gurza declaration, page 7, ¶ 22, lines 13-16)

13 **Grounds for Objection No. 9:** *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§
14 210, 350, 352; *Lack of Foundation*, Cal. Evid. Code §§ 702-402-403; *Opinion Evidence*, Cal.
15 Evid. Code § 800, 801; *Hearsay*, Cal. Evid. Code §§ 1200.

16 Mr. Platten is not affiliated with AFSCME Local 101, and his opinions do not necessarily
17 represent those held by AFSCME. Therefore, this evidence is irrelevant and would cause
18 AFSCME undue prejudice if Mr. Platten's opinions are imputed against it.

19 Furthermore, there is no evidence that Mr. Gurza has personal knowledge to support the
20 statements contained in ¶ 22 of his declaration or that he was present at the hearing referenced
21 in the declaration. There is, similarly, no evidence that Mr. Platten or his clients were
22 qualified to allegedly opine that "the City Charter was not a barrier to employees paying the
23 increased contribution rates." Cal. Evid. Code § 800-801 (lay and expert opinion
24 qualifications).

25 Lastly, to the extent that the statements described in ¶ 22 are offered to establish the truth of
26 the matters they assert, they are inadmissible hearsay statements; because Mr. Platten neither
27 represents AFSCME nor is opposing AFSCME during the course of this litigation, his
28 statements do not qualify as a "party admission" as far as AFSCME is concerned. There is no
evidence that the statements are admissible under any hearsay exception. Thus, the
information in ¶ 22 is inadmissible because it lacks a proper foundation, is improper opinion
testimony, and is inadmissible hearsay.

Court's Ruling on Objection No. 9: _____ Sustained _____ Overruled

Objection No. 10: Gurza declaration, page 7, ¶ 22 Exhibit 8 (Transcript of Comments of Christopher Platten)

Grounds for Objection No. 10: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§
210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200. 6

1 Mr. Platten is not affiliated with AFSCME Local 101, and his opinions do not necessarily
2 represent those held by AFSCME. Therefore, this evidence is irrelevant and would cause
3 AFSCME undue prejudice if Mr. Platten's opinions are imputed against it.

4 Lastly, the statements within the transcript are hearsay without an exception. Here, there is no
5 question that the transcripts included in Exhibit 8 include statements made out of court by Mr.
6 Platten. The extent they are offered for the truth of the matters they assert, they are
7 inadmissible. There is no evidence that the statements are within a hearsay exception;
8 because Mr. Platten neither represents AFSCME nor is opposing AFSCME during the course
9 of this litigation, his statements do not qualify as a "party admission" as far as AFSCME is
concerned. Furthermore, the transcript is not presented as an official record and is, therefore,
constitutes hearsay as well, Exhibit 8 is inadmissible hearsay.

Court's Ruling on Objection No. 10: _____ Sustained _____ Overruled

10 **Objection No. 11:** Gurza Decl., p. 7, ¶ 23, Exhibits 9-18, 21-26, 29-34 (agreements or "Last, Best,
11 and Final" offers between City and other unions)

12 **Grounds for Objection No. 11:** *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§
210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200.

13 None of these agreements involved AFSCME. Therefore, this evidence is irrelevant and
14 would cause AFSCME undue prejudice if other unions' alleged positions or actions are
15 imputed against it.

16 **Court's Ruling on Objection No. 11:** _____ Sustained _____ Overruled

17 **Objection No. 12:** "During fiscal years 2010-2011, the following six unions agreed that their
18 members would pay additional employee pension contributions, both ongoing and one-time, as well
19 as a one-time base pay reduction, equivalent to approximately 10% of total compensation, except the
20 POA agreed that its members would pay 5.25% in additional employee pension contributions on a
one-time basis. The additional contributions and pay reductions were to be used to defray pension
plan unfunded liabilities.

- 21 • Association of Engineers and Architects (AEA) (plaintiff Mukhar, lead plaintiff in the
22 *Mukhar* case, is president of the union). [Exhibit 11]
- 23 • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp, a plaintiff in the
24 *Mukhar* case, is president of the union). [Exhibit 15]
- 25 • City Association of Management Personnel (CAMP). [Exhibit 17]
- 26 • International Brotherhood of Electrical Workers, Local 332 (IBEW). [Exhibit 23]
- 27 • Operating Engineers, Local No. 3 (OE#3) (which represents plaintiff in the *Harris* case).
28 [Exhibit 25]
- San José Police Officers' Association (SJPOA) (plaintiff in the *SJPOA* case). [Exhibit 29]"
(Gurza Decl., pp. 7-8, ¶ 24, lines 7:24-28, 8:1-10.)

Grounds for Objection No. 12: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§
210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200.

1 None of these agreements involved AFSCME. Therefore, this evidence is irrelevant and
2 would cause AFSCME undue prejudice if other unions' alleged positions or actions are
3 imputed against it.

4 **Court's Ruling on Objection No. 12:** _____ Sustained _____ Overruled

5 **Objection No. 13:** "The following six unions or groups agreed to a wage reduction rather than paying
6 additional employee pension contribution rates, or the City imposed a wage reduction in the form of a
Last Best and Final Offer by resolution:

- 7
 - Association of Building, Mechanical and Electrical Inspectors (ABMEI). [Exhibit 9]
 - 8 • Association of Legal Professionals (ALP). [Exhibit 13]
 - Executive Management and Professional Employees (Unit 99). [Exhibits 32, 33]
 - 9 • Other Unclassified Non-Management Employees (Units 81 and 82) [Exhibits 32, 33]

10 (Gurza Decl., p. 8, ¶ 25, lines 13-25.)

11 **Grounds for Objection No. 13:** *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§
210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200.

12 None of these agreements involved AFSCME. Therefore, this evidence is irrelevant and
13 would cause AFSCME undue prejudice if other unions' alleged positions or actions are
14 imputed against it.

15 **Court's Ruling on Objection No. 13:** _____ Sustained _____ Overruled

16 **Objection No. 14:** "The union agreements to pay additional employee pension contributions
17 contained substantially similar provisions. For example, the 2010-2011 MOA between the City and
the Association of Engineers and Architects (AEA Unit 43) of which plaintiff Mukhar is the
18 president, states at Section 10.1.1:

19 On-Going Additional Retirement Contributions. Effective June 27, 2010, all employees who
are members of the Federated City Employees' Retirement System will make additional
20 retirement contributions in the amount of 7.30% of pensionable compensation, and the
amounts so contributed will be applied to reduce the contributions that the City would
21 otherwise be required to make for the pension unfunded liability, which is defined as all costs
in both the regular retirement fund and the cost-of-living fund, except current service normal
22 costs in those funds. This additional employee retirement contribution would be in addition to
the employee retirement contribution rates that have been approved by the Federated City
23 Employees' Retirement System Board. The intent of this additional retirement contribution
by employees is to reduce the City's required pension retirement contribution rate by a
24 commensurate 7.30% of pensionable compensation, as illustrated below

25
26 In addition, the union agreed to an additional one-time additional pension contribution " in the
27 amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to
28 reduce the contributions that the City would otherwise be required to make during that time period

1 for the pension unfunded liability... (Section 10.1.2)" [Emphasis deleted]

2 (Gurza Decl., p. 9, ¶ 27, lines 9-26.)

3
4 **Grounds for Objection No. 14:** *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200, *Assumes Facts Not in Evidence*.

5 This AEA agreement did not involve AFSCME. Therefore, this evidence is irrelevant and
6 would cause AFSCME undue prejudice if the other unions' alleged positions or actions are
7 imputed against it. Insofar as the paragraph implies that AFSCME had such an agreement, it
8 assumes facts not in evidence.

9 **Court's Ruling on Objection No. 14:** _____ Sustained _____ Overruled

10 **Objection No. 15:** "The unions also agreed to the City amending the Municipal Code to provide for
11 the payment by employees of these 'additional contributions.' The AEA agreement states: 'The
12 parties understand that in order to implement this provision, an amendment must be made to the
13 Federated City Employees' Retirement System that requires an ordinance amending the San Jose
14 Municipal Code.' (Exh. 11 at Section 10.1.4.) The POA agreement stated: 'The parties understand
15 that in order to implement this provision, an amendment must be made to the Police & Fire
16 Department Retirement Plan that requires an ordinance amending the San Jose Municipal Code.'
17 (Exh. 39 at p. 3 of POA's Memorandum of Agreement.) See Exhibits 11, 15, 17, 23, 25, and 29.
18 (Gurza Decl., pp. 9-10, ¶ 28, lines 9:26-28, 10:1-7.)

16 **Grounds for Objection No. 15:** *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200, *Assumes Facts Not in Evidence*.

18 Neither the AEA nor POA agreements involved AFSCME. Therefore, this evidence is
19 irrelevant and would cause AFSCME undue prejudice if the other unions' alleged positions or
20 actions are imputed against it. Insofar as the paragraph implies that AFSCME had such an
21 agreement, it assumes facts not in evidence.

21 **Court's Ruling on Objection No. 15:** _____ Sustained _____ Overruled

22 **Objection No. 16:** "Most of the additional employee contributions and/or wage reductions for fiscal
23 year 2010-2011 equaled approximately 10% of employee total compensation. In the following to
24 fiscal years, 2011-2012 and 2012-2013, the unions that had agreed to the additional employee agreed
25 to take the 10% reduction in total compensation as a straight wage reduction, and other unions agreed
26 to take or continue to take wage reductions...."
27 (Gurza Decl., p. 10, ¶ 30, lines 13-17.)

27 **Grounds for Objection No. 16:** *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200, *Assumes Facts Not in Evidence*.

1 Insofar as this paragraph discusses union agreements to accept a wage reduction or additional
2 pension contributions, it is irrelevant because AFSCME was not a part of that group. (See
3 Allen Decl., ¶ 15.) Therefore, this evidence is irrelevant and would cause AFSCME undue
4 prejudice the other unions' alleged positions or actions are imputed against it. Insofar as the
5 paragraph implies that AFSCME had such an agreement, it assumes facts not in evidence.

6 **Court's Ruling on Objection No. 16:** _____ Sustained _____ Overruled

7 **Objection No. 17:** "During negotiations over compensation, the City and its employee unions have
8 treated increased employee pension contribution rates as interchangeable with wage decreases. Both
9 are elements that reduce "Total Compensation," which is the total cost to the City of pay and benefits,
10 including base pay, retirement contributions, health insurance, and other benefits. Increased employee
11 pension contributions have some advantages over wages for employees. The deductions are made
12 pre-tax and are credited to the employee's retirement account, which means that if the employee
13 leaves employment with the City, the employee has the option of taking the balance of the retirement
14 account. During the later negotiations, the City received an e-mail from a union representative
15 making these points." (Gurza Decl., page 10, ¶ 31, lines 20-28)

16 **Grounds for Objection No. 17:** *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§
17 210, 350, 352; *Lack of Foundation*, Cal. Evid. Code §§ 702-402-403 *Hearsay*, Cal. Evid.
18 Code §§ 1200; *Opinion Evidence*, Cal. Evid. Code § 800, 801

19 There is no evidence that AFSCME was one of the "employee unions" that treated increased
20 employee contribution rates as interchangeable with wage decreases; in fact, it never did.
21 (See, e.g., Allen Decl., ¶ 14.) Paragraph 5's broad wording ("employee unions") implies that
22 AFSCME was part of this group. Because AFSCME was not part of this group, this evidence
23 is irrelevant and would cause AFSCME undue prejudice if other unions' alleged positions are
24 imputed against it.

25 There is no evidence that Mr. Gurza, as a declarant, was present at the negotiations referenced
26 in ¶ 31 of his declaration or that he has any personal knowledge of the information stated in ¶
27 31. Moreover, the statements referenced in ¶ 31 were made out of court and are inadmissible
28 hearsay. There is no evidence to show that the statements come within any exception to the
hearsay exclusion; because the other unions neither represent AFSCME nor do they oppose
AFSCME during the course of this litigation, their alleged positions do not qualify as "party
admissions" as far as AFSCME is concerned. Thus, the information in ¶ 31 is inadmissible
because it lacks a proper foundation and is inadmissible hearsay.

Finally, there is no evidence showing that the opinions expressed regarding the alleged
similarities between increased contributions and wage decreases were proffered by
individuals qualified to express such opinions. Mr. Gurza is neither a tax expert, an
economist, nor even an accountant. Therefore, he does not qualify as an expert witness qualified
to proffer such opinions. Thus, the statements in ¶ 31 of Mr. Gurza's declaration are
inadmissible as improper opinion testimony.

Court's Ruling on Objection No. 17: _____ Sustained _____ Overruled

1
2 **Objection No. 18:** "A typical agreement with the Federated unions stated:

3 The City and Employee Organization agree to transition from the current partial pre-funding
4 of retiree medical and dental healthcare benefits (referred to as the 'policy method') to pre-
5 funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan
6 ('Plan'). The transition shall be accomplished by phasing into fully funding the ARC over a
7 period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree
8 healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by
9 June 30, 2039 (closed amortization). The City and Plan members (active employees) shall
10 contribute to funding the ARC in the ration currently provided under Section 3.28.380(C)(1)
11 and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical
12 benefits shall be made by the City and members in the ratio of one-to-one.... (Exh. 39, AEA,
13 MOA, Section 12.1)."

14 (Gurza Decl., p. 13, ¶ 40, lines 1-9.)

15 **Grounds for Objection No. 18:** *Lack of Relevance and Undue Prejudice*, Cal. Evid.
16 Code §§ 210, 350, 352; *Secondary Evidence Rule*, Cal. Evid. Code §§ 1520 et. seq.

17 Insofar as this paragraph relates to agreements with the City and other unions (not AFSCME),
18 it is irrelevant and unduly prejudicial. It also violates the secondary evidence rule by
19 describing an agreement with another party rather than producing a copy of an agreement
20 with AFSCME.

21 **Court's Ruling on Objection No. 18:** _____ Sustained _____ Overruled

22 **Objection No. 19:** "The payments of the full ARC were to be phased in incrementally but: '[B]y
23 the end of the five year phase-in, the City and plan members shall be contributing the full Annual
24 Required Contribution in the ration currently provided under Section 3.28.380 (C) (1) and (3) of the
25 San Jose Municipal Code.' (Exh. 39, AEA, MOA, Section 12.3.)" (Gurza Decl., p. 13, ¶ 41, lines 10-
26 14.)

27 **Grounds for Objection No. 19:** *Lack of Relevance and Undue Prejudice*, Cal. Evid.
28 Code §§ 210, 350, 352; *Secondary Evidence Rule*, Cal. Evid. Code §§ 1520 et. seq.

Insofar as this paragraph relates to agreements with the City and other unions (not AFSCME),
it is irrelevant and unduly prejudicial. It also violates the secondary evidence rule by
describing an agreement with another party rather than producing a copy of an agreement
with AFSCME.

Court's Ruling on Objection No. 19: _____ Sustained _____ Overruled

Objection No. 20: "This or similar language was agreed to by all Federated unions that are
plaintiffs in these consolidated actions or who represent individuals who are plaintiff in these
consolidated actions, with the exception of the Operating Engineers (OE#3), which represents the
Harris plaintiffs. The City imposed these terms on OE#3 as part of the City's Last Best and Final
Offer. True and correct copies of the Last, Best, and Final Offer, and authorizing resolutions, are
attached as Exhibits 42 and 43. (Gurza Decl., p. 13, ¶ 43, lines 19-24.)

Grounds for Objection No. 20: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352

Insofar as this paragraph relates to actions involving or directed to a different union, it is irrelevant and unduly prejudicial to AFSCME.

Court's Ruling on Objection No. 20: _____ Sustained _____ Overruled

Objection No. 21: Gurza Decl., p. 13, ¶ 43, lines 19-24, Exhibits 42-43

Grounds for Objection No. 21: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352

This evidence relates to another union and is therefore irrelevant and unduly prejudicial towards AFSCME.

Court's Ruling on Objection No. 21: _____ Sustained _____ Overruled

Objection No. 22: "The SJPOA and IAFF also agreed to pay towards the full ARC, but with some additional provisions. Their respective agreements cap the contribution towards paying the full ARC at 10% of pensionable pay for employees and provide for meet and confer and dispute resolution procedures for amounts over that percentage. True and correct copies of those Agreements, and authorizing resolutions are attached as Exhibits 41 (POA) and 21 (IAFF)." (Gurza Decl., pp. 13-14, ¶ 44, lines 13:25-28, 14:1.)

Grounds for Objection No. 22: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352

This evidence relates to other unions and is therefore irrelevant and unduly prejudicial towards AFSCME.

Court's Ruling on Objection No. 22: _____ Sustained _____ Overruled

Objection No. 23: Gurza Decl., pp. 13-14, ¶ 44, lines 13:25-28, 14:1, Exhibits 21 & 41

Grounds for Objection No. 23: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352

This evidence relates to other unions and is therefore irrelevant and unduly prejudicial towards AFSCME.

Court's Ruling on Objection No. 23: _____ Sustained _____ Overruled

Objections to Request for Judicial Notice

Objection No. 24: City's RJN D (San José Municipal Code, Chapter 3.36 "1961 Police and Fire Department Retirement Plan," Section 3.36.010 to 3.36.3760 [Current to June 30, 2012].)

Grounds for Objection No. 24 *Lack of Relevance and Undue Prejudice*, Cal. Evid.

Code §§ 210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200

AFSCME members are not a part of the 1961 Police and Fire Department Retirement Plan. Therefore, this evidence is irrelevant and would cause AFSCME undue prejudice if the code provisions were construed to pertain against AFSCME.

Court's Ruling on Objection No. 24: _____ Sustained _____ Overruled

Objection No. 25: City's RJN N (City of San José Resolution No. 70822, "A Resolution of the Council of the City of San José Approving the Methodology for the Distribution of Moneys in the [SRBR] of the Police and Fire Department Retirement Fund," adopted January 29, 2002.")

Grounds for Objection No. 25: *Lack of Relevance and Undue Prejudice*, Cal. Evid. Code §§ 210, 350, 352; *Hearsay*, Cal. Evid. Code §§ 1200


AFSCME members are not beneficiaries to the Police and Fire Department Retirement Fund. Therefore, this evidence is irrelevant and would cause AFSCME undue prejudice if the code provisions were construed to pertain against AFSCME.

Court's Ruling on Objection No. 25: _____ Sustained _____ Overruled

Dated: April 30, 2013

BEESON, TAYER & BODINE, APC

By:


TEAGUE P. PATERSON
VISHTASP M. SOROUSHIAN
Attorneys for AFSCME LOCAL 101

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<p>MARLENE DUNLEAVY (510) 625-9700 307 REESON, TAYLOR & BDDINE 483 NINTH STREET OAKLAND CA 946074051</p> <p>SHIP TO: ART HARTINGER, ESQ. MEYERS, NAVE, RIBACK, SILVER & SUITE 1500 555 12TH STREET OAKLAND CA 94607-4095</p>	<p>13 LBS DWT: 18.13,3</p> <p>1 OF 1</p> <p>CA 946 9-01</p> 	<p>UPS NEXT DAY AIR SAVER 1P</p> <p>TRACKING #: 1Z 8Y5 544 13 9798 6379</p>		<p>BILLING: P/P</p> <p>Reference #1: 0791-0001</p> <p>USPS WHTN50 39 0A 04/2013</p> <p>Received MAY 02 2013 meyers nave</p> <p>135.023</p> <p>K. Thomas J. Fely</p>
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